IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

CRP.No. 1156 of 2005(H)

(IA 2448 / 2005 IN OS.470/2001 of MUNSIFF COURT, ATTINGAL)

REVN. PETITIONER/PETITIONER/PLAINTIFF:

SEBASTIAN, S/O.KURIAN, GLAD VILLA,
PANDAKASALA, CHIRAYINKEEZHU,
TRIVANDRUM DISTRICT.

BY ADV. SRI.M.R. RAJESH

RESPONDENT/ RESPONDENT/DEFENDANT:

USHA CHANDRAN, PATTARUMADOM,
KOONTHALLOR, CHIRAYINKEEZHU, TRIVANDRUM DISTRICT.

BY ADV. SRI.P.K.MUHAMMED

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP.No. 1156 of 2005(H)

ORDER ON I.A.NO. 3274 OF 2005 IN C.R.P.N0. 1156 OF 2005

DISMISSED.

26.11.2007 SD/- K.T. SANKARAN, JUDGE.

/TRUE COPY/

P.A. TO JUDGE.

K.T. SANKARAN, J.

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C.R.P. No. 1156 OF 2005

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Dated this the 26th November, 2007

O R D E R

The petitioner, who is the plaintiff in O.S.No. 470 of 2001 on the file of the court of the Munsiff, Attingal filed I.A.No. 2448 of 2005 under Rule 1 of Order XXIII of the Code of Civil Procedure to withdraw the suit with liberty to institute a fresh suit. The court below disposed of the application in the following manner:

> *" Heard both counsel on perusal of records, it is seen that petitioner herein moved I.A. 2076/05 which was dismissed on merit. In my view the present application will not come within the purview of order 23 Rule 1 C.P.C."*

2. The order passed by the court below is not a speaking order . On what ground, the court below held that the application will not come within the purview of Order XXIII Rule 1 of the Code of Civil Procedure is not stated . On what ground, the application was rejected is also not stated. What are the bare minimum facts which led to I.A.No. 2448 of 2005 are also not stated. It is stated in the Memorandum of Civil Revision Petition that I.A.No. 2076 of 2005 was filed for amendment of plaint. On reading the impugned order, the revisional court is not in a position to understand the necessary bare minimum facts to arrive at the conclusion as to whether the order passed by the court

below is correct. Therefore, the impugned order is set aside. The trial court shall dispose of I.A.No. 2448 of 2005 afresh after affording an opportunity of being heard to both the parties.

The Civil Revision Petition is disposed of as above.

K.T. SANKARAN,
JUDGE.

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